

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC TODD GARCIA,

Plaintiff,

vs.

No. CV 19-00647 MV/KBM

CURRY COUNTY,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under Rule 41(b) of the Federal Rules of Civil Procedure on the handwritten “1983 tort claim” (“Complaint”) filed by Plaintiff Eric Todd Garcia on July 16, 2019 (Doc. 1). The Court will dismiss the Complaint without prejudice for failure to comply with Court orders, statutes, and rules, and for failure to prosecute.

Garcia filed this civil rights proceeding under 42 U.S.C. § 1983. (Doc. 1). The Complaint was not in proper form and was not signed by Garcia as required by Rule 11 of the Federal Rules of Civil Procedure. (Doc. 1, Doc. 2 at 2). Garcia also did not pay the filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On July 17, 2019, the Court ordered Garcia to cure these deficiencies within 30 days by filing a signed complaint in proper form and either paying the filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 2). The Order advised Garcia that, if he failed to cure the deficiencies within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 2). The Court also sent Garcia the forms for submitting a § 1983 complaint and an application under § 1915. (Doc. 2 at 2). More than 30 days elapsed after entry of the Court’s Order to Cure Deficiencies and Garcia did not submit a complaint in proper form, pay the filing

fee, submit an application to proceed under § 1915, or otherwise respond to the Court's July 17 Order.

As a result, on August 27, 2019, the Court entered an Order to Show Cause. (Doc. 3). The Order directed Garcia to submit a complaint in proper form, pay the \$5.00 filing fee, submit an application to proceed *in forma pauperis*, or show cause why the case should not be dismissed for failure to comply with the July 17, 2019 Order. (Doc. 3). The Court set a deadline of 30 days for Garcia to comply with the Order to Show Cause. (Doc. 8 at 2). More than 30 days has elapsed, and Garcia has not submitted a complaint in proper form, has not paid the filing fee, has not submitted an application to proceed *in forma pauperis*, has not shown cause, and has not otherwise communicated with the Court.


At the time it was filed, the unsigned, handwritten complaint implied that Garcia was incarcerated at the Curry County Detention Center, but the address on the envelope indicated that he was located at the Central New Mexico Correctional Facility. (Doc. 1). Moreover, a review of the Curry County Detention Center records indicates that Garcia was released from custody on July 9, 2019, before the complaint was filed in this Court. A review of the Central New Mexico Correctional Facility records shows that Garcia is no longer incarcerated at that facility, either, and that he has not provided the Court with any current address.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the filing fee from a plaintiff or authorize the plaintiff to proceed without prepayment of the fee. Garcia has failed to either pay the \$5.00 filing fee or submit an application to proceed under § 1915. On two separate occasions, Garcia was directed to comply with the statutory requirements or show cause why he should not be required to do so. (Doc. 2, 3). Garcia failed to respond to either of the Court's Orders.

Pro se litigants are required to follow the federal rules of procedure and simple, nonburdensome local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980). The Court may dismiss an action under Rule 41(b) for failure to prosecute, failure to comply with statutes or rules of civil procedure, or failure to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003).

Garcia has failed to comply with the Court's orders, failed to comply with statutory provisions, including 28 U.S.C. § 1915, failed to comply with Rule 11, and failed to prosecute this action. Accordingly, the Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with statutes, rules, and Court Orders, and for failure to prosecute this proceeding.

IT IS ORDERED that the Complaint filed by Plaintiff Eric Todd Garcia (Doc. 1) is **DISMISSED** without prejudice under Rule 41(b) for failure to comply with rules, statutes, and the Court's Orders, and for failure to prosecute.


UNITED STATES DISTRICT JUDGE